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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/783,407	02/14/2001	Jeffrey S. Roberts	MFCP.80719	4664
5251	7590	08/06/2004	EXAMINER	
SHOOK, HARDY & BACON LLP 2555 GRAND BLVD KANSAS CITY,, MO 64108			CHO, HONG SOL	
			ART UNIT	PAPER NUMBER
			2662	
DATE MAILED: 08/06/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<p><b>Application No.</b></p> <p>09/783,407</p>	<p><b>Applicant(s)</b></p> <p>ROBERTS ET AL.</p>	
	<p><b>Examiner</b></p> <p>Hong Cho</p>	<p><b>Art Unit</b></p> <p>2662</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,4,7,16-18 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6, 8-15, 19-22, 26-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02-14-2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07192004</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. New corrected drawing is required in this application because there is no label for element 78 in figures 2 and 3. Figure 8 does not have a label for X and Y-axis.

Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Specification***

2. The abstract of the disclosure is objected to because it exceeds the maximum number of allowable words. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102(b) that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 6, 8, 10, 12, 14-15, 19-20, and 27 are rejected under 35 U.S.C. 102(b) as being unpatentable over Shaffer et al (U.S. 6021114), hereinafter referred to as Shaffer.

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Re claim 1, Shaffer discloses transferring data traffic over telecommunications network (figure 1), and monitoring data traffic to measure the network utilization, and selecting maximum number or percentage of bandwidth utilization at any one time (*monitoring of the network bandwidth utilization and identifying maximum number of utilization*, column 6, lines 18-21; column 5, lines 32-35) by a monitoring system integrated at communications switch, and configuring communication switch to allow only certain amounts of data to be transmitted as a function of network utilization (*receiving block size portion of the set of data at one or more intervals*) at time based or quantity based (column 6, lines 30-48).

Re claims 5 and 8, Shaffer discloses the messaging system (*server*) communicating (*receiving and sending data*) to the desired destination (*client*) over telecommunications network (*Internet*) in figure 1 (column 3, lines 63-67), Re claim 6, Shaffer discloses monitoring data traffic on the trunk line between desired destination and telecommunications network (*interface between client and network*).

Re claims 10 and 12, as explained in the rejection of claim 1, Shaffer discloses measuring network utilization continuously in column 7, lines 24-25 (*repeating monitoring during the transmission of block size portion of the data*) to identify maximum utilization number at each user-defined time interval (column 5, lines 32-35).

Re claims 14 and 15, Shaffer discloses a monitoring system consisting of software (*computer-readable medium*) and hardware (column 4, lines 28-32)

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to perform the method of claim 1.

Re claims 19 and 20, Shaffer discloses the communication switch that can manage data traffic in a communications network (*a transfer management component which manages the transfer of data over the network*) and monitor the network bandwidth utilization between a desired destination (*a client machine*) and telecommunication network. Shaffer fails to teach explicitly calculating a network transfer speed as a function of monitored number of utilization. However, it is inherent in network monitoring system that packet throughput (*transfer speed*) is computed as a function of network utilization.

Re claim 27, Shaffer discloses a monitoring system consisting of software (*computer-readable medium*) and hardware (column 4, lines 28-32) to perform the method of claim 19.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 9, 11, 13, 21-22, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer.

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Re claim 2 and 11, Shaffer discloses monitoring the number and percentage of bandwidth availability (column 6, lines 23-25). Shaffer discloses all aspects of claimed invention as set forth in the rejection of claim 1, but fails to teach calculating an average number of network bandwidth utilization during the transmission of the portion of the set of data by monitoring network periodically, **Official Notice is taken** that the process of measuring network performance parameters such as average number of bandwidth utilization and transfer rate is well known and expected in the art of network capacity evaluation and planning. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the process of monitoring network performance in Shaffer to determine average number of bandwidth utilization and transfer rate by monitoring a given network. The motivation to combine is to get information on the level of network performance periodically.

Re claims 9 and 13, Shaffer does not teach a client updating software and sending a data to a server. **Official Notice is taken** that it is well known in the art that a client requests a communication service to a server by sending a request data, and updating a executable file or downloading patch files of existing software from a server.

Re claims 21 and 26, Shaffer discloses all aspects of claimed invention as set forth in the rejection of claims 1 and 2. Shaffer further discloses transmitting an adjusted block size to utilize network bandwidth efficiently (*transferring a*

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*minimum block size of data to refine network performance*, column 3, lines 18-26;  
column 6, lines 46-50)

Re claim 22, Shaffer discloses obtaining network utilization data over a period of time, which included user-defined time interval (*at specific points in time intervals*, column 6, lines 24-26).

Re claim 28, Shaffer discloses a monitoring system consisting of software (*computer-readable medium*) and hardware (column 4, lines 28-32) to perform the method of claim 21.

#### ***Allowable Subject Matter***

7. Claims 3, 4, 7, 16-18, and 23-25 are allowable.

The following is an examiner's statement for reasons for allowance.

8. Claim 3, 4, 7, 16-18, and 23-25 are allowable over the prior art of record since the cited references taken individually or in combination fails to particularly disclose a method of changing the block size of the intervals based on maximum and minimum threshold, and having two data fields containing a timestamp and a quantity of data that represents how much data is passed through the. It is noted that the closest prior art, Shaffer shows a method of monitoring network performance parameters. However, Shaffer fails to suggest a method of changing the block size of the intervals based on maximum and minimum threshold, and having computer-executed components and

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structures of two data fields for managing data transfer over a network as required by the claimed invention.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US Patent (6209033) to Datta et al discloses network capacity evaluation and planning

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 703-305-0343. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 703-305-4798. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RICKY NGO  
PRIMARY EXAMINER